

RULES AND PROCEDURES FOR THE BOARD OF ZONING APPEALS OF THE CITY OF FRANKLIN, INDIANA

WHEREAS, the City of Franklin Board of Zoning Appeals (Board) is authorized and required by I.C. 36-7-4-900 Series to supervise and make rules for: the filing of appeals; the application for variances and special exceptions; special uses; contingent uses; the giving of notice; the conduct of hearings; and the determination of whether a variance application is for a variance of use or for a variance from the developmental standards such as height, bulk, or area; and the creation, form, recording, modification, enforcement, and termination of commitments; and

WHEREAS, the City of Franklin Board of Zoning Appeals determines that its rules should be printed and be made readily available to all applicants and other interested persons.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY OF FRANKLIN BOARD OF ZONING APPEALS, THAT THE FOLLOWING RULES BE ADOPTED.

ARTICLE 1- OFFICERS AND STAFF

1.1 ELECTION OF OFFICERS

The Board shall, at its first meeting of each year, elect a Chairman, a Vice-Chairman and a Secretary from its members. A person who receives a majority vote of the entire membership of the Board shall be declared elected and shall serve until a new person is declared elected to the office at the first meeting of the following year.

1.2 CHAIRMAN

The Chairman shall preside over all regular and special meetings of the Board. The Chairman shall appoint committees. The Chairman shall also rule on all points of procedure, unless overruled by a majority vote of the Board. The Chairman shall sign all official documents on behalf of the Board.

1.3 VICE CHAIRMAN

The Vice-Chairman shall act as Chairman during the absence or disability of that officer. The Board shall elect a Chairman pro tempore from among its members if both the Chairman and Vice-Chairman are absent or disabled.

1.4 SECRETARY

The Secretary shall keep a complete and accurate record of all proceedings and votes of the Board, and assume all responsibility for the custody and preservation of all papers and documents of the Board, and shall prepare, publish and distribute reports, ordinances and other material relating to Board activities.

1.5 STAFF

The Planning Director or his/her assignee shall provide technical and analytical assistance to the Board. The Director shall conduct a complete and thorough investigation of all matters that come before the Board and may enlist at his/her discretion, technical and professional assistance from engineers, architects and other consultants as required.

ARTICLE II - MEETINGS AND PUBLIC HEARINGS

2.1 APPLICATION

This rule shall apply to all public hearings required by State Law or by the *City of Franklin Zoning Ordinance* and to all regular, special and emergency meetings of the Board.

2.2 ORDER AND COURTESY

The Chairman or the Board's designee shall preserve order and may warn any member or other person present that particular conduct may be a breach of peace. If any person persists in such conduct following the warning, the Chairman or the Board's designee may call a recess and request the assistance of local law enforcement to enter and restore order as allowed by law.

2.3 PROCEDURAL RULES

The most recent edition of *Robert's Rules of Order* shall govern the conduct of all meetings except to the extent that it conflicts with the Law or these Rules.

2.4 ALL MEETINGS AND HEARINGS PUBLIC

All meetings and hearings of the Board, except executive sessions, shall be open to the public and petitioner(s), remonstrator(s) and other persons desiring to be heard shall have the right to be heard, in accordance with these rules.

2.5 REGULAR MEETINGS

The Board shall conduct regular meetings on the first Wednesday of each month at 7:00 P.M. in the Franklin City Hall. If the date of a regular meeting falls on a legal holiday recognized by the City of Franklin, or if it is impossible to conduct the meeting at that time or place, the Chairman may set an alternative date, time or place for the regular meeting. Notice shall be given as required by I.C. 36-7-4-920(b) and the meeting shall be subject to the State Open Door Law.

2.6 SPECIAL MEETINGS

Special meetings shall be held upon call of the Chairman, written request by two Board members or as determined at a regular meeting. All members shall be notified of the time and place of a special meeting. Only matters included in the call for a special or emergency meeting shall be considered. Notice shall be given in the same manner as required for regular meetings.

2.7 QUORUM

A majority of members of the Board shall constitute a quorum. No action of the Board is official however, unless approved by a majority of the entire membership of the Board.

2.8 ORDER OF BUSINESS

The order of business at regular meetings shall be:

- (A) Call to order;
- (B) Roll call and determination of quorum;
- (C) Reading of minutes of previous meeting;
- (D) Approval of minutes;
- (E) Old business (tabled or continued items);
- (F) New business;
- (G) Report of officers and committees;
- (H) Communications;
- (I) Adjournment.

The order of business for special meetings shall be:

- (A) Call to order;
- (B) Roll call and determination of quorum;
- (C) The business for which the special meeting was called;
- (D) Adjournment.

2.9 AGENDA

The agenda shall list all items to be considered by the Board at the regular or special meeting. The items shall be listed on the agenda in the order in which the petition or other document was filed with the staff. No item shall be considered by the Board unless it appears on the agenda. A petition may be withdrawn by the petitioner at any time prior to the meeting at which it was to be considered subject to notification rules herein.

The agenda shall be sent by U.S. mail to all members of the Board and each petitioner or his agent, along with any party or group filing written request for that calendar year to reserve the agenda. The agenda shall be available for public inspection at the City Hall no later than (48) hours before any regular meeting.

2.10 CASE NUMBERS

Items placed on the agenda shall be identified as follows:

- (A) Case numbers will begin with ZB and followed by the year and the docket number and shall begin anew on January 1 of each year.

(B) Following the docket number will be type of case:

- (1) AP- Appeal from the determination of the staff;
- (2) UV- Variance of use;
- (3) V - Variance from developmental standards;
- (4) SE- Special exceptions;
- (5) NC- Non-conforming use change.

2.11 HEARINGS

A hearing is any proceeding involving the grant or denial of a variance by the Board or an appeal to the Board. A hearing may be held as part of any regular or special meeting or at any other place or time if the notice required by these rules and by Law is given.

The conduct of hearings shall be governed by the following:

- (A) To the extent necessary for full disclosure of all relevant facts and issues, the Board shall afford all parties the opportunity to present evidence and argument, respond, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limitation of these Rules.
- (B) The Chairman or a designee may administer oaths and affirmations and rule on any offer of proof, evidence, or other motion.
- (C) Nonparties shall have an opportunity to present oral or written statements. When the opportunity is allowed, all parties shall have the opportunity to challenge or rebut written statements.
- (D) The hearing shall be recorded at the Board's expense. The Board is not required, at its expense, to prepare a transcript, unless required to do so by law. Any person, at the person's expense, may cause a reporter approved by the Board to prepare a transcript from the Board's record, or cause additional recordings to be made during the hearing so long as it does not cause a distraction or disruption.

2.12 APPEARANCES

The petitioner and any remonstrators or their agents must appear in person or by counsel to present a petition or an oral remonstrance for the Board to consider their cases. A written remonstrance filed with the Board before the hearing may be considered by the Board and be made a part of the record of the hearing without requiring the appearance of the remonstrator; such a remonstrance shall include the remonstrator's signature, printed name, address and telephone number.

If no person appears on behalf of a petition, the petition may be tabled until the following meeting or dismissed.

2.13 CONTINUANCES

All hearings on petitions shall be filed subject to the following:

- (A) The Board or the Board's staff may request a continuance not to exceed sixty (60) days in which to review the petition or to allow the investigation or review of issues not raised in the original petition or new matters.
- (B) All requests for continuances must be made to the Board or its staff prior to the hearing. The Board or its designee will determine whether the continuance will be granted. An continuance shall not be unreasonably denied.
- (C) A party may request a continuance not to exceed sixty (60) days. The request shall be in writing and include the reasons for the request. Petitioner(s) or remonstrator(s) may request a continuance to a date certain, as specified below. Such request shall be in writing and filed with the Board designee no later than the Friday immediately preceding the day of the scheduled hearing. The request shall:
 - (1) Specify the date to which the party is requesting that the hearing be continued;
 - (2) Indicate whether it is the first request made by the party for a continuance for the hearing; and
 - (3) Contain a certification that notice of the request has been given to other parties as required below.
- (D) A party requesting a continuance shall give notice to all parties required to be served with notice and to attorneys or agents who have entered their appearance or are known by the party requesting the continuance to represent petitioner(s) or remonstrator(s).

The Board may, at any time, in it's own discretion, continue the hearing of any petition. On it's own motion, the Board may determine if renotification of interested property owners shall be required if a petition is continued at a hearing for which proper notice was given by the petitioner in compliance with the notice requirements.

A continuance may be granted by the Board at the hearing if a showing is made of good cause. If the petitioner fails to appear at a hearing on the petition, either in person or by counsel, without sufficient reason, the petition may be dismissed or the matter may be continued. Petitions will be dismissed after ninety (90) days of inaction unless good cause is shown.

2.14 AMENDMENTS TO ANY PETITION

Requests to amend a petition may be filed in writing prior to the start of any hearing, or made orally at the hearing. Any remonstrators present shall have the right to be heard on any objections they may have to such a proposed amendment. It shall be within the discretion of the Board to grant or deny requests for amendments and to require renotification in compliance with these rules. Provided, however, any proposed

amendment to modify additional standards or regulations of the applicable ordinance(s) shall be redocketed and republished and the petitioner shall pay an additional filing fee.

2.15 REQUIRED FINDINGS OF FACT

At the time of filing a petition, proposed, detailed, written findings of fact may be filed with the Board by its staff or that of any City Department. Any other interested party may file proposed findings of fact at any time prior to the hearing subject to these rules. The Board shall in all cases heard by it, make written findings of fact.

2.16 COMMUNICATION WITH MEMBERS

A person may not communicate with any member of the Board with intent to influence the member's action on a matter pending before the Board. Not less than five (5) days before the hearing, however, the staff shall file with the Board a written case report setting forth any facts relating to the matter. Staff reports shall be available to the Board five (5) days prior to the hearing.

2.17 PRESENTATIONS

The Board shall act on petitions in the following order:

- (A) The application shall be read and the affected area located on the City Zoning Map.
- (B) The Board's designee or staff shall present the case reflecting the facts of the Petition.
- (C) The Petitioning party shall present facts relating to the case with approximately twenty (20) minutes being available for the presentation. The burden to supply all information necessary for a clear understanding of the case shall be upon the Petitioner.
- (D) Each remonstrating party shall have the opportunity to present facts relating to the case with approximately twenty (20) minutes total being available for their presentations.
- (E) The Board shall then recognize those nonparties who have registered and allow approximately ten (10) minutes for their presentations.
- (F) The Board may direct questions to any speaker.
- (G) The Petitioner shall then be allowed approximately ten (10) minutes in which to present rebuttal.
- (H) The staff may present a staff report setting forth any opinions relating to the petition.
- (I) The Chairman shall call for a discussion by members, which may include directing any further questions to any speakers.
- (J) The Chairman shall call for a motion.

2.18 INDECISIVE VOTE

When a vote of the Board does not result in an official action of the Board, the petition shall be automatically continued, redocketed, and heard at the next regularly scheduled meeting.

2.19 CONFLICTS OF INTEREST

Any member of the Board may not participate in a hearing or decision of the Board concerning a zoning matter in which he has direct or indirect financial interest. Any member with a conflict must notify the Board, in writing, three (3) days prior to the hearing and that notification be entered in to the Board's records. If the case should arise where a quorum is needed for a hearing an appointment of a temporary Board Member may be made by the appointing body at the Chairman's request.

2.20 VISUAL INSPECTION

Board members may visually inspect the affected area prior to hearing.

ARTICLE III- VARIANCE, SPECIAL EXCEPTION & APPEALS NOTICE AND PROCEDURE

3.1 APPLICATIONS

Every petitioner for an appeal, variance, or exception shall complete an application supplied by the staff. The staff may require the petitioner to submit any additional information deemed relevant for consideration by the Board, including written proof that the petitioner is the agent of the property owner or owners if the petitioner is not the sole owner of the property.

3.2 FILING REQUIREMENTS

Every petition for an appeal, exception or variance shall be filed with the staff no later than fifteen (15) days prior to its consideration by the Board. Any appeal to the Board shall be filed with the Board within thirty (30) days. The Board's designee shall determine if an application is for a variance of use or a variance from the developmental standards.

3.3 NOTICE REQUIREMENTS

In all appeals, variances, exceptions or changes in non-conforming uses, the petitioner shall prepare a legal notice on a form prescribed by the Board. The legal notice shall be advertised in a newspaper of general circulation in the City of Franklin not less than ten (10) days prior to the date of the hearing. The petitioner shall assume the cost of said notice and shall submit proof of publication.

Additional notice, on a form prescribed by the Board shall be given by the petitioner and verified by a certificate of mailing at least ten (10) days before the date of the hearing to the owners (a) of all adjoining parcels in the case of variances from developmental standards or (b) of all adjoining parcels within 500 feet of the perimeter of the subject property or two property owners whichever is a lesser distance in the case of all other types of petitions.

For purpose of the notice requirements of this paragraph, where any such adjacent parcels of land are owned by petitioner, the subject property shall be deemed to include only the parcel for which the land use regulations are proposed to be altered.

In the case of property which has been submitted to the Horizontal Property Law (I.C. 36-1-6), each condominium unit shall be deemed one property ownership and the common area designated in the appropriate condominium instruments shall be deemed one property ownership, and notice given to the co-owners of such common area may be given to the association of co-owners set forth in condominium instruments recorded in the office of the Recorder of Johnson County, Indiana.

For the purpose of determining names and addresses of legal title owners, the records in the office of the Johnson County Auditor which list the current owner of record at the time the notice shall be sent shall be deemed to be the true names and addresses of persons entitled to notice and if notice is sent to such persons for the purposes of the hearing before the Board, such notice shall be deemed proper. The petitioner shall determine the names and addresses of the legal title owners by obtaining a list of those owners from the Mapping Department of the Auditors Office. This list shall then be verified by the petitioner through the use of the transfer books maintained by the Auditor's office. Such notice shall state:

- (A) The case number and substance of the petition;
- (B) The general location by address or other identifiable locational or geographic characteristic of the subject property. This does not require the identification of any real property by metes and bounds;
- (C) The name of the petitioner;
- (D) The time and place said petition has been set for hearing;
- (E) That the petition and file, including the legal description of the subject property, may be examined in the offices of the Board.

Such notice shall also be sent in the same manner to each neighborhood organization within the boundaries of which the subject property is located, as delineated upon the City of Franklin's organization list. The list of those neighborhood organizations entitled to notice shall be provided to the petitioner by the staff of the Board.

An informational brochure describing the public hearing process shall be supplied by the staff and reproduced and distributed to the adjoining property owners by the petitioner with the notice at the cost of the petitioner.

Further, the petitioner shall permit the staff to place a sign of public notice on the subject property. This sign will be placed on the subject property on the date which has been established as the application deadline for the meeting at which the petition will be heard. The petitioner must allow the sign to remain on the subject property until the final disposition of the petition. The sign will be removed by the staff the day following the final disposition of the petition.

Adequate notice is given under these rules if:

- (A) By certificate of mailing not less than ten (10) days prior to the hearing advising the location and nature of the subject appealed or petitioned and the date, place, and item of the public hearing as stated herein, or;
- (B) The petitioner obtains the signatures of all interested parties on a form supplied by the Board stating the date, time and place of the hearing, the name of the petitioner, and briefly describes the variance or special exception requested. The signature of any person is not to be construed as a waiver or consent to the petition, but simply evidence that the person has received notice. The completed form must be filed with the Board before it may act on the petition.

3.4 AFFIDAVIT OF NOTICE

Petitioner, his attorney or agent, shall furnish evidence of compliance with the above notice requirement by filing a notarized statement in the offices of the Board, listing the names, addresses, and plat map numbers of the property owners and neighborhood organizations to whom notice was sent. Said notarized statement shall be postmarked or filed in the offices of the Board within two (2) business days prior to the hearing date. For purpose of this paragraph, "business day" shall refer to a day when the offices of the Board are open to the public for the transaction of business for the entire period of its normal operating hours and shall exclude any day on which such offices are not open to the public for the transaction of business or any day when such offices are open for less than the normal operating hours.

3.5 DEFECTIVE NOTICE

If proper notice has not been given, the Board shall continue the petition until a later date to allow time for unnotified persons to prepare for the hearing. Personal appearances shall waive any defect in notice unless said defect is timely raised at the beginning of the hearing when the Board is considering requests for continuances.

3.6 COMMITMENTS

The Board may require the owner of the parcel of property to make a written commitment concerning the use or development of the parcel. For the purpose of I.C. 36-7-4-921(b), the City of Franklin is the only interested party who may enforce the commitment. A commitment shall be created by the owner or agent of the property by (1) either affixing his or her signature to a written statement of the terms of the commitment, or (2) by declaring such commitments for the record at the hearing. Such commitments shall be listed by the Board as an element of the motion on the petition. A commitment may be modified or terminated only by a decision of the Board made at a public hearing after notice is given in accordance with the requirements set forth in these rules. If a person fails to abide by a commitment, that person commits a violation of the zoning ordinance. The Commitment shall be enforced in accordance with the provisions of the City of Franklin's ordinances.

3.7 STAFF APPROVAL OF COMMITMENT COMPLIANCE

In those petitions where a decision of the Board is conditioned upon the petitioner's compliance with a requirement imposed by the Board concerning construction and site development, or where the Board requires or permits the petitioner to make written commitments concerning the use of development of the subject property, and the requirement or written commitment stipulates the review and approval of final plan by the staff. The staff shall have the following authority and shall follow the procedures in the review process:

- (A) Staff approval of final plans shall be obtained prior to start of work. It is suggested that the staff should be consulted early in the design stage of the project in order that any needed changes can easily be incorporated into final plans. (This suggestion is not to be interpreted as a requirement for approval.)
- (B) The scope of review of the final plan by the staff may include, but not be limited to one or more of the following developmental aspects:
 - (1) Site layout;
 - (2) Building location, configuration and design;
 - (3) Parking location and configuration;
 - (4) Interior traffic flow;
 - (5) Ingress and egress to the development;
 - (6) Sign location, size and design;
 - (7) Extent, placement and specifications for landscaping, fencing and screening.
- (C) In exercising discretion to approve or disapprove a final plan, the staff shall use the following standard:
 - (1) If the condition or written commitment indicates that the applicable developmental aspects will comply with certain written standards (e.g. Architectural Graphics Standards) or a development example (e.g. a development project in existence in Johnson County), the staff will be guided by the standard expressed by the written document of example.
 - (2) If a standard is not provided under (1), the staff will be guided by the comments prepared and presented in the staff report, statements made at the hearing by the petitioner, remonstrators and other interested parties and comment made by decision makers during the course of the hearing.
 - (3) If a standard is not provided under (1), and if comments and statements mentioned in (2) do not provide an adequate standard, the staff shall consider what is "good professional practice under the circumstances". In determining what is good professional practice under the circumstances, the staff will be guided by the characteristics of similar development of superior quality.

The standard applied by the staff is not confined to the standard that can be inferred from the development standards of the applicable zoning district and may include standards described in plan and or testimony presented at the public hearing and agreed to in principle by the petitioner.

- (D) If the staff does not approve a plan submitted by the Petitioner, and no alternative plan acceptable to both parties can be agreed upon, the petitioner shall have the right to appeal such action of the staff. Such an appeal shall be filed as a petition for a modification of commitments to approve a specific development plan.

ARTICLE IV- FINAL DISPOSITION OF PETITIONS

4.1 DISMISSAL OF PETITIONS

The Board may dismiss a petition for want of prosecution or for lack of jurisdiction. Any petition which has been dismissed by the Board for want of prosecution shall not again be filed for consideration by the Board within a period of twelve (12) months prior to the date of the dismissal, unless the Board grants an approval petition to permit a refiling of the petition.

4.2 WITHDRAWAL OF PETITIONS

No petition may be withdrawn by the petitioner after a vote has been ordered by the Chairman. No petition which has been withdrawn by the petitioner shall again be filed for consideration by the Board within a period of three (3) months from the date of said withdrawal, unless the same division of the Board grants an approval petition to permit a refiling of the petition.

4.3 REFILING FOLLOWING ADVERSE DECISIONS

Any petition which was denied by the Board shall not be reheard by the Board for a period of twelve (12) months, with said twelve month period commencing with the date the respective petition was denied. However, the Board may allow any such petition to be reheard before the expiration of said twelve month waiting period if both of the following conditions are met: (1) a majority of the entire membership of the Board votes in favor of rehearing the petition at a subsequent meeting of the Board, and (2) said petition is filed and considered pursuant to all of the other rules, regulations and requirements contained herein, including the provision that all of the public notice requirements outlined in Section 3.3 of these *Rules and Procedures* are met prior to any such petition being reheard by the Board.

4.4 LETTER OF GRANT OR DENIAL

Following the Board's action on an administrative appeal, a special exception, an approval or a variance petition, the staff shall notify the petitioner of the Board's decision by sending the petitioner a letter of grant or denial which shall include, if a letter of grant, all conditions imposed by the Board.

4.5 REVIEW BY CERTIORARI

In accordance with Section 36-7-4-1003, *Indiana Code*, each decision of the Board of Zoning Appeals is subject to review by certiorari. Each person aggrieved by a decision of the Board may present, to the Circuit or Superior Court of Johnson County, a verified petition setting forth that the decision is illegal as a whole or in part and specifying the grounds of the illegality. Any such petitions which are to be reviewed by a certiorari must be submitted to the court within thirty (30) days from the date of the decision to the Board.

ARTICLE V- AMENDMENTS AND SUSPENSIONS

5.1 AMENDMENTS

These rules may be amended by a four-fifths (4/5) vote of the entire membership of the Board.

5.2 SUSPENSIONS

These rules or any portion of them may be suspended by a four fifths (4/5) vote of the entire membership of the Board. No suspension shall continue beyond the adjournment of the meeting at which the motion to suspend was passed.

5.3 EFFECTIVE DATE

These rules shall enter into effect immediately upon the adoption of this resolution.

5.4 FEDERAL AND STATE LAW

Notwithstanding any other provisions hereof, nothing herein shall require the Board to observe any other act, or do any other thing, in contravention of any applicable federal or state law.

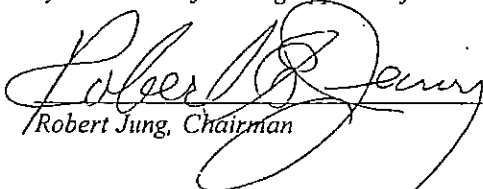
5.5 APPLICABLE LAW

These rules shall be construed in accordance with the laws of the State of Indiana.

5.6 SEVERABILITY

Should any provision of these rules be void or unenforceable, such provision shall be deemed omitted and these rules with such provision omitted shall remain in effect.

*These Rules of Procedure are hereby adopted on the 2nd day of February, 2000
by the Board of Zoning Appeals of the City of Franklin, Indiana.*


Robert Jung, Chairman

H. Richard Graham, Secretary